

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants: Schaeck et al. Confirmation No.: 1249
Serial No.: 09/731,509 Group Art Unit: 2136
Filed: 12/07/2000 Examiner: Colin, Carl G.
Title: CONDITIONAL SUPPRESSION OF CARD HOLDER VERIFICATION

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Dear Sir:

APPELLANTS' APPEAL BRIEF TO THE BOARD OF
PATENT APPEALS AND INTERFERENCES

This is an appeal under 37 C.F.R. §1.191 and §1.192 from a Final Rejection, mailed on January 29, 2008, of claims 16-20, 22-36, 38-43 and 45-57, comprising all the claims finally rejected. A Combined Notice of Appeal and Petition for Extension of Time was filed on May 29, 2008, with an Appeal Brief due September 29, 2006 with a two-month extension, payment

for which is included herewith. A Combined Transmittal of Appeal Brief and Petition for Extension is included herewith authorizing the Commissioner to charge the fee for filing this Appeal Brief in the amount of \$510 as set forth in 37 C.F.R. §1.17(f), and the extension fee in the amount of \$460 under the provisions of 37 C.F.R. §1.136(a). Therefore, this Brief is being timely filed.

REAL PARTY IN INTEREST

International Business Machines Corporation, the sole assignee of the inventors' rights in this patent application, is the real party in interest.

RELATED APPEALS AND INTERFERENCES

To the knowledge of Appellants, Appellants' undersigned legal representative, or the assignee, there are no other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

STATUS OF CLAIMS

This patent application was filed on December 7, 2000, with the U.S. Patent and Trademark Office. As filed, the application included fifteen (15) claims, of which two (2) were independent claims (i.e., claims 1 and 13).

On May 6, 2004, a first Office Action was mailed that included a rejection of claims 1-15. In particular, claims 1-15 were rejected under 35 U.S.C. §102(b), as being anticipated by Wright et al. (U.S. Patent No. 4,900,904).

In response to this Office Action, Appellants filed an Response to Office Action on August 4, 2004, in which claims 1-15 were canceled, and claims 16-47 added, including six (6) independent claims (i.e., claims 16, 33, 34, 40, 41 and 47). Claims 16-47 remained pending.

On November 29, 2004, a final Office Action was mailed that included a rejection of claims 16-47. In particular, claims 33, 40 and 47 were rejected under 35 U.S.C. §102(e), as being anticipated by Sloan (U.S. Patent No. 6,179,205); and claims 16-47 were rejected under 35 U.S.C. §103(a) as being obvious over Findley, Jr. et al. (U.S. Patent No. 5,979,773) in view of Sloan.

In response to this Office Action, Appellants filed a Response to Final Office Action on January 27, 2005, in which claims 16, 34 and 41 were amended, and claims 28, 33, 40 and 47 were canceled. Claims 16-27, 29-32, 34-39 and 41-47 remained pending.

On March 11, 2005, an Advisory Action was mailed that indicated that for purposes of appeal, the proposed amendments were not entered.

In response to this Advisory Action, Appellants filed a Request for Continued Examination and a Preliminary Amendment on April 8, 2005, in which claims 16, 20, 28, 33, 34, 36, 40, 41 and 47 were amended. No claims were canceled. Claims 16-47 remained pending.

On June 28, 2005, a non-final Office Action was mailed that included a rejection of claims 16-47. In particular, claims 16-47 were rejected under 35 U.S.C. §103(a) as being obvious over Findley, Jr. et al. (U.S. Patent No. 5,979,773) in view of Sloan (U.S. Patent No. 6,179,205).

In response to this Office Action, Appellants filed a Response to Office Action on September 23, 2005, in which no claims were amended, added or canceled. Claims 16-47 remained pending.

On December 6, 2005, a final Office Action was mailed that included a rejection of claims 16-47. In particular, claims 16-47 were rejected under 35 U.S.C. §103(a) as being obvious over Findley, Jr. et al. (U.S. Patent No. 5,979,773) in view of Sloan (U.S. Patent No. 6,179,205).

In response to this final Office Action, Appellants filed a Response to Final Office Action on January 27, 2006, in which no claims were amended, added or canceled. Claims 16-47 remained pending.

On February 17, 2006, an Advisory Action was mailed that indicated that for purposes of appeal, the proposed amendments were not entered.

In response to this Advisory Action, Appellants filed a Notice of Appeal on March 9, 2006. Appellants thereafter filed an Appellants' Appeal Brief to the Board of Patent Appeals and Interferences on May 8, 2006.

On July 27, 2006, a non-final Office Action was mailed that included a rejection of claims 16-47. In particular, claims 16-30 and 32-47 were rejected under 35 U.S.C. §102(b), as being anticipated by Beuk et al. (U.S. Patent No. 5,446,266); and claim 31 was rejected under 35 U.S.C. §103(a) as being obvious over Beuk et al. in view of Sloan (U.S. Patent No. 6,179,205).

In response to this Office Action, Appellants filed an Amendment and Response to Office Action on October 27, 2006, in which claims 16, 19, 28, 32, 34, 35, 41 and 42 were amended, and claims 21, 37 and 44 canceled. No claims were added. Claims 16-20, 22-36, 38-43 and 45-47 remained pending.

On January 11, 2007, a final Office Action was mailed that included a rejection of claims 16-20, 22-36, 38-43 and 45-47. In particular, claims 16-20, 22-30, 32-36, 38-43 and 45-47 were rejected under 35 U.S.C. §102(b), as being anticipated by Beuk et al. (U.S. Patent No. 5,446,266); and claim 31 was rejected under 35 U.S.C. §103(a) as being obvious over Beuk et al. in view of Sloan (U.S. Patent No. 6,179,205).

In response to this final Office Action, Appellants filed an Amendment and Response to Final Office Action on March 12, 2007, in which claims 16, 33, 34, 40, 41 and 47 were amended. No claims were added or canceled. Claims 16-20, 22-36, 38-43 and 45-47 remained pending.

On April 5, 2007, an Advisory Action was mailed that indicated that for purposes of appeal, the proposed amendments were not entered.

In response to this Advisory Action, Appellants filed an Amendment and Response to Office Action Accompanying Request for Continued Examination on May 9, 2007, in which claims 16, 22, 25, 33, 34, 40, 41 and 45-47 were amended. No claims were added or canceled. Claims 16-20, 22-36, 38-43 and 45-47 remained pending.

On June 14, 2007, Appellants filed a Supplemental Amendment in which claims 16, 33, 34, 40, 41 and 47 were amended. No claims were added or canceled. Claims 16-20, 22-36, 38-43 and 45-47 remained pending.

On August 23, 2007, a non-final Office Action was mailed that included a rejection of claims 16-20, 22-36, 38-43 and 45-47. In particular, claims 16-20, 22, 25, 28-36, 38-43 and 45-47 were rejected under 35 U.S.C. §103(a), as being obvious over Rikuna (U.S. Patent No. 4,752,678) in view of Nakamura et al. (U.S. Patent No. 5,917,168); and claims 23-24 and 26-27 were rejected under 35 U.S.C. §103(a) as being obvious over Rikuna in view of Nakamura et al. as applied to claims 16, 22 and 25, and further in view of Risafi et al. (U.S. Patent No. 6,473,500).

In response to this Office Action, Appellants filed an Amendment and Response to Office Action on November 20, 2007, in which claims 16, 19, 20, 28, 32, 33, 34-36, 40, 41-43 and 47 were amended. No claims were added canceled. Claims 16-20, 22-36, 38-43 and 45-47 remained pending.

On January 29, 2008, a final Office Action was mailed that included a rejection of claims 16-20, 22-36, 38-43 and 45-47. In particular, claims 16-20, 22, 25, 28-36, 38-43 and 45-47 were rejected under 35 U.S.C. §103(a), as being obvious over Rikuna (U.S. Patent No. 4,752,678) in view of Nakamura et al. (U.S. Patent No. 5,917,168); and claims 23-24 and 26-27 were rejected under 35 U.S.C. §103(a) as being obvious over Rikuna in view of Nakamura et al. as applied to claims 16, 22 and 25, and further in view of Risafi et al. (U.S. Patent No. 6,473,500).

In response to this final Office Action, Appellants filed a Response to Final Office Action on March 28, 2008, in which claims 34-36, 38-43 and 45-47 were canceled. No claims were amended or canceled. Claims 16-20 and 22-33 remained pending.

On April 30, 2008, an Advisory Action was mailed that indicated that for purposes of appeal, the proposed amendments were entered.

In response to this Advisory Action, Appellants filed a Combined Notice of Appeal and Petition for Extension of Time on May 29, 2008, appealing the final rejection of claims 16-20 and 22-33.

Therefore, the status of the claims is as follows:

Claims allowed – None.

Claims objected to – None.

Claims rejected – 16-20 and 22-33; and

Claims canceled – 1-15, 21, 34-47.

Appellants are appealing the rejection of claims 16-20 and 22-33, with each of the following claims being separately argued: 16 and 33.

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 16 recites a method of controlling card holder verification. The method comprises checking the presence of a trusted association between at least one device and a card usable with the at least one device. See the present application at FIG. 2, elements 210 and 220, and in the

text at page 10, line 17 to 25. The checking comprises comparing by one of the card and the at least one device a first identifier stored on the card with one or more identifiers stored in the at least one device. See page 4, lines 4-22 of the present application. If the checking indicates the presence of the trusted association, then performing card holder verification separate from the comparing using the card and without a holder of the card providing information by providing another identifier to the card from the at least one device for comparing by the card to a second identifier stored on the card that is different from the first identifier. See the present application at FIG. 2, elements 230 and 240, and in the text at page 4, lines 4-22, and page 10, line 25 to page 11, line 6. Otherwise, if the checking indicates no trusted association, then involving the holder of the card in performing card holder verification. See the present application at FIG. 2, elements 250 and 260, and in the text at page 11, lines 7-12.

Claim 33 recites a method of performing card holder verification. The method comprises checking the presence of a trusted association between at least one device and a card usable with the at least one device, the checking comprising comparing by one of the card and the at least one device a first identifier stored on the card with one or more identifiers stored in the at least one device, and performing card holder verification by the card separate from and based on the checking. See the present application at FIG. 2, elements 210 and 220, and in the text at page 4, lines 4-19, page 10, lines 17 to 25, and page 11, lines 2-6. The method further comprises that if the checking indicates the presence of the trusted association, then a personal identification number of the holder of the card different from the first identifier is automatically provided to the card from the at least one device, and verified using the card without the holder of the card

providing information. See the present application at FIG. 2, elements 230 and 240, and in the text at page 4, lines 11-14 and 19-22, and page 10, line 25 to page 11, line 6, and page 12, lines 8-10. However, if the checking indicates no trusted association, then the holder of the card is requested to enter the personal identification number to verify the holder of the card via the card comparing the personal identification number entered to a second identifier stored on the card. See the present application at FIG. 2, elements 250 and 260, and in the text at page 11, lines 7-12.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

On January 29, 2008, a final Office Action was mailed that included a rejection of claims 16-20, 22-36, 38-43 and 45-47. In particular:

1. The final Office Action rejected claims 16-20, 22, 25, 28-36, 38-43 and 45-47 under 35 U.S.C. §103(a), as allegedly obvious over Rikuna (U.S. Patent No. 4,752,678) in view of Nakamura et al. (U.S. Patent No. 5,917,168); and

2. The final Office Action also rejected claims 23-24 and 26-27 under 35 U.S.C. §103(a) as allegedly obvious over Rikuna in view of Nakamura et al. (U.S. Patent No. 5,917,168) as applied to claims 16, 22 and 25, and further in view of Risafi et al. (U.S. Patent No. 6,473,500).

However, in response to the final Office Action dated March 28, 2008, Appellants canceled non-method claims 34-36, 38-43 and 45-47 without prejudice in order to pursue them in a separate application.

Thereafter on April 30, 2008, an Advisory Action was mailed indicating that Appellants' proposed amendments made on March 28, 2008 would be entered for purposes of an appeal.

ARGUMENT

I. Rejection under 35 U.S.C. §103(a) over Rikuna in view of Nakamura et al.

Claims 16-20, 22, 25, 28-36, 38-43 and 45-47:

Claims 16-20, 22, 25, 28-36, 38-43 and 45-47 stand rejected under 35 U.S.C. §103 as allegedly obvious over Rikuna in view of Nakamura. Appellants respectfully submit that the rejection of these claims is erroneous and request reversal of this rejection for at least the reasons set forth below.

In the "Response to Arguments" section of the final Office Action, counter arguments are presented addressing Appellants' remarks presented in the prior response. As an initial matter, with regard to claim 16, the final Office Action alleges that:

Applicant argues that Rikuna does not disclose one of the identifiers is from the card because the only thing coming from the terminal is the key for decrypting the EN PAN which is not the thing being compared to the PAN.

However, what Appellants actually argued was:

However, both the PAN and EN PAN are stored on and come from the first card. The only thing coming from the terminal is the key for decrypting the EN-PAN, which is not the thing being compared to the PAN.

Thus, to clarify, Appellants submit that what was argued was that Rikuna does not disclose that one of the identifiers comes from the terminal, rather than the card.

Moving on to more substantive issues, the Response to Arguments alleges that the decrypted PAN is an identifier being compared with the PAN from the card. However, it is clear from Rikuna at column 8, lines 5 27, and in FIG. 3 that the encrypted PAN (the EN PAN) and the PAN are both stored on and originate from the first card. The key for decrypting EN PAN is stored on the terminal. Thus, the question becomes whether the items being compared (i.e., the PAN and decrypted EN PAN) both come from the card or from the card and terminal, respectively. Appellants submit that the items being compared both come from the card, since the key is merely something that unlocks information that is already there. For example, when one considers an encrypted email, do the contents of the email come from the program decrypting the same, or from the sender? Appellants submit that the content of the email comes from the sender, and is merely unlocked by the email program. A similar situation can be envisioned for an encrypted document. The position taken in the final Office Action extrapolates to allege that the decrypted document comes from the decryption program, rather than the author of the document. When viewed in this light, Appellants submit that the real contents of the EN PAN are those that are stored on the card, and, therefore, the decrypted EN PAN should be considered as coming from the card, not the terminal.

Moreover, claim 16 recites that the one or more identifiers are stored in the at least one device. In contrast, both the PAN and EN-PAN of Rikuna are stored on the card. Even if one assumes the position of the final Office Action, i.e., that the decrypted EN-PAN comes from the

terminal, one cannot ignore that the decrypted EN-PAN is simply not stored in the terminal, as required by claim 16.

With regard to the performing aspect of claim 16, the Response to Arguments does not dispute that the Rikuna PIN is always entered into the second card by the card holder before inserting into the terminal. Rather, the final Office Action apparently interprets claim 16 as tying the lack of user input information to the time of performing card holder verification. However, Appellants submit that the claim does not tie the lack of user input information to the time of verification, but only ties that lack of card holder information to the verification process. The fact remains that Rikuna performs a verification process that always includes looking at a PIN that is always entered by the card holder. Thus, Rikuna cannot teach or suggest performing card holder verification without a holder of the card providing information.

Finally, against the aspect of claim 16 of involving the holder of the of the card in performing card holder verification if the checking indicates no trusted association, the Response to Arguments cites to Nakamura at column 5, line 64 through column 6, line 16. It is alleged that Nakamura teaches in one embodiment eliminating a PIN and assuming the user is proper, and in another embodiment requiring a PIN only when the transaction amount exceeds a preselected floor. However, in either case, if the Nakamura terminal and card do not authenticate, the result is non-use of the card (see Nakamura at column 6, line 16), rather than card holder involvement in card holder verification.

Therefore, for at least the reasons noted above, Appellants submit that claim 16 cannot be rendered obvious over Rikuna in view of Nakamura et al.

Amended claim 33 contains limitations similar to those noted above with respect to claim 16. Thus, the remarks above are equally applicable thereto.

In addition, however, claim 33 also recites verifying the card holder by the card comparing the PIN entered by the holder of the card to a second identifier stored on the card. In contrast, any comparing is done in Rikuna by the terminal, and Nakamura does not remedy this shortcoming.

Therefore, for at least the common reasons with claim 16, as well as the additional reasons noted above, Appellants submit that claim 33 cannot be made obvious over Rikuna in view of Nakamura et al.

Appellants submit that the dependent claims are allowable for the same reasons as the independent claims from which they directly or ultimately depend, as well as for their additional limitations.

For example, claim 20 recites that performing card holder verification hidden from the holder of the card comprises automatically obtaining a personal identification number of the holder of the card and verifying the personal identification number without the holder of the card providing the personal identification number.

Against claim 20, the final Office Action cites to Rikuna at column 8, lines 38 45 and lines 58 65. However, the second cited section specifically teaches that "...since the PIN data which was key input by the card holder..." See also column 8, line 32 and lines 46-48, which make clear that the PIN in Rikuna is always input by the card holder, and, thus, cannot meet the

limitation of verifying “without the holder of the card providing the personal identification number.”

Therefore, Appellants submit that claim 20 cannot be rendered obvious over Rikuna in view of Nakamura et al.

As still another example, claim 29 recites that the method further comprises associating the at least one device and the card.

Against claim 29, the final Office Action cites to Rikuna at column 3, lines 15-23 and column 7, lines 40-52. However, the first cited section describes FIG. 1, which includes a terminal and a first card, but teaches nothing about creating any kind of an association between the first card and the terminal. The second cited section merely teaches the process of identifying the user’s card, but also fails to teach creating an association between the user’s card and the terminal.

Therefore, for at least the reasons noted above, Appellants submit that claim 29 cannot be rendered obvious over Rikuna in view of Nakamura et al.

As yet another example, claim 30 recites the method further comprises controlling the association between a device of the at least one device and the card.

Against claim 30, the final Office Action cites to Rikuna at column 3, lines 15-23 and column 7, lines 40-52. However, the first cited section describes FIG. 1, which includes a terminal and a first card, but teaches nothing about controlling the association between the first

card and the terminal. The second cited section merely teaches the process of identifying the user's card, but also fails to teach controlling the association between the user's card and the terminal.

Therefore, for at least the reasons noted above, Appellants submit that claim 30 cannot be rendered obvious over Rikuna in view of Nakamura et al.

II. Rejection under 35 U.S.C. §103(a) over Rikuna, in view of Nakamura et al. as applied to claims 16, 22 and 25, and further in view of Risafi et al.

Claims 23-24 and 26-27:

Claims 23-24 and 26-27 stand rejected under 35 U.S.C. §103(a), as allegedly obvious over Rikuna in view of Nakamura et al. as applied to claims 16, 22 and 25, and further in view of Risafi et al. (U.S. Patent No. 6,473,500). Appellants respectfully submit that the rejection of these claims is erroneous and respectfully request reversal of this rejection for at least the reasons set forth below.

Appellants submit that the dependent claims are allowable for the same reasons as the independent claims from which they directly or ultimately depend, as well as for their additional limitations.

For example, claim 24 recites that the card identifier is associated with a personal identification number usable in card holder verification, and that the method further comprises erasing the association between the card identifier and the personal identification number.

Against claim 24, the final Office Action cites to Risafi at column 4, lines 17-47.

However, Appellants submit the cited section of Risafi does not teach or suggest erasing the association between a card identifier and the PIN. Erasing the association, for example, still allows the same PIN to be used; the invention would just require that the PIN be entered by the card holder since the association that allows verification without the card holder entering the PIN is no longer present. Such is not the case with the scenario of Risafi.

Therefore, for at least the reasons noted above, Appellants submit that claim 24 cannot be rendered obvious over Rikuna in view of Nakamura et al. as applied above, and in further view of Risafi.

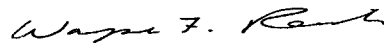
Claim 27 includes aspects similar to those argued above with respect to claim 24. Thus, the remarks made with respect to claim 24 are equally applicable to claim 27. Therefore, Appellants submit that claim 27 also cannot be rendered obvious over Rikuna in view of Nakamura et al. as applied above, and in further view of Risafi.

CONCLUSION

In conclusion, Appellants submit that none of claims 16-20, 22, 25, 28-36 is obvious over Rikuna (U.S. Patent No. 4,752,678) in view of Nakamura et al. (U.S. Patent No. 5,917,168), and that none of claims 23-24 and 26-27 is obvious over Rikuna in view of Nakamura et al. (U.S. Patent No. 5,917,168) as applied to claims 16, 22 and 25, and further in view of Risafi et al. (U.S. Patent No. 6,473,500).

Therefore, Appellants submit that the final Office Action should be reversed in all respects.

Respectfully submitted,



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Dated: September 29, 2008.

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CLAIMS APPENDIX

1-15. (Canceled)

16. (Previously Presented) A method of controlling card holder verification, said method comprising:

checking the presence of a trusted association between at least one device and a card usable with the at least one device, wherein the checking comprises comparing by one of the card and the at least one device a first identifier stored on the card with one or more identifiers stored in the at least one device; and

if the checking indicates the presence of the trusted association, then performing card holder verification separate from the comparing using the card and without a holder of the card providing information by providing another identifier to the card from the at least one device for comparing by the card to a second identifier stored on the card that is different from the first identifier, otherwise, if the checking indicates no trusted association, then involving the holder of the card in performing card holder verification by the card.

17. (Previously Presented) The method of claim 16, wherein the at least one device is located in a trusted environment.

18. (Previously Presented) The method of claim 16, wherein the card comprises a chipcard.

19. (Previously Presented) The method of claim 16, wherein the performing card holder verification without a holder of the card providing information comprises performing card holder verification hidden from the holder of the card.

20. (Previously Presented) The method of claim 19, wherein the performing card holder verification hidden from the holder of the card comprises automatically obtaining a personal identification number of the holder of the card and verifying the personal identification number without the holder of the card providing the personal identification number.

21. (Canceled).

22. (Previously Presented) The method of claim 16, wherein the comparing comprises comparing a card identifier stored on the card with one or more card identifiers stored in the device.

23. (Previously Presented) The method of claim 22, wherein the card identifier is associated with a personal identification number usable in card holder verification, and said method further comprises replacing the personal identification number with another personal identification number.

24. (Previously Presented) The method of claim 22, wherein the card identifier is associated with a personal identification number usable in card holder verification, and said method further comprises erasing the association between the card identifier and the personal identification number.

25. (Previously Presented) The method of claim 16, wherein the comparing comprises comparing an identifier of the device with one or more device identifiers stored on the card.

26. (Previously Presented) The method of claim 25, wherein the device identifier is associated with a personal identification number usable in card holder verification, and said method further comprises replacing the personal identification number with another personal identification number.

27. (Previously Presented) The method of claim 25, wherein the device identifier is associated with a personal identification number usable in card holder verification, and said method further comprises erasing the association between the device identifier and the personal identification number.

28. (Previously Presented) The method of claim 16, wherein the performing card holder verification without a holder of the card providing information comprises automatically obtaining a personal identification number of the holder of the card and verifying the personal identification number without requesting information from the holder of the card, and wherein the involving the holder of the card comprises requesting the holder of the card to enter the personal identification number.

29. (Previously Presented) The method of claim 16, further comprising associating the at least one device and the card.

30. (Previously Presented) The method of claim 29, further comprising controlling the association between a device of the at least one device and the card.

31. (Previously Presented) The method of claim 30, wherein the controlling comprises using a network connectable to the device.

32. (Previously Presented) The method of claim 16, wherein the checking is between at least one device and a plurality of cards, and wherein the performing card holder verification without a holder of the card providing information is for a plurality of holders.

33. (Previously Presented) A method of performing card holder verification, said method comprising:

checking the presence of a trusted association between at least one device and a card usable with the at least one device, wherein the checking comprises comparing by one of the card and the at least one device a first identifier stored on the card with one or more identifiers stored in the at least one device; and

performing card holder verification by the card separate from and based on the checking, wherein:

if the checking indicates the presence of the trusted association, then a personal identification number of the holder of the card different from the first identifier is automatically provided to the card from the at least one device, and verified using the card without the holder of the card providing information;

however, if the checking indicates no trusted association, then the holder of the card is requested to enter the personal identification number to verify the holder of the card via the card comparing the personal identification number entered to a second identifier stored on the card.

34-47. (Canceled)

Schaeck et al.
09/731,509
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EVIDENCE APPENDIX

NONE

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12/07/2000

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RELATED PROCEEDINGS APPENDIX

NONE